

86 Ill. Adm. Code 130.445(d) states that advanced trade-in credits are not transferable. (This is a GIL).

November 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 19, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of the 1,200 members, we hereby respectfully request a further clarification of a tax treatment matter that affects dealers in general.

On July 26<sup>th</sup> your office had responded to my March 12, 1999, letter regarding how the transfer of advanced trade-in credits is affected by mergers and consolidations. The July 26<sup>th</sup> General Information Letter only discussed how advanced trade-in credits are affected by mergers and consolidations completed under the Business Corporation Act. This letter seeks further clarification on how the transfer of credits is affected by the merger or consolidation of banks or credit unions.

According to the Department's administrative rule, advanced trade-in credits are non-transferable. 86 Ill. Adm. Code 130.455(d). However, ORGANIZATION understands that under certain circumstances when a bank or credit union is involved in a merger or consolidation, the new bank or credit union can use the prior banks or credit unions existing advanced trade-in credit agreements. What criteria does the Department of Revenue use in determining whether such a transfer of the advanced trade-in credit agreements can take place after a bank or credit union has merged or is consolidated? Are there other types of reorganizations or sales of banks or credit unions that would also permit the transfer of the trade-in credits?

Our organization sincerely appreciates your prompt attention and assistance in this matter. I look forward to receipt of your response. If you have any questions, please do not hesitate to call.

Section 28 of the Illinois Banking Act, 205 ILCS 5/28, states as follows:

"Continuation of corporate entity. A resulting State bank, national bank or, after May 31, 1997, out-of-state bank shall be considered the same business and corporate entity as each merging bank or insured savings association or as the converting bank or insured savings association with all the property, rights, powers, duties, and obligations of each merging bank or of the converting bank or insured savings association except as affected by the State law in the case of a resulting State bank or out-of-state bank or by the national law in the case of a resulting national bank, and by the charter and by-laws of the resulting bank. **A resulting bank shall be liable for all liabilities of the merging banks, insured savings association, or converting bank or insured savings association, and all the rights, franchises and interests of the merging banks, insured savings association, or converting bank or insured savings association in and to every species of property, real, personal, and mixed, and chooses in action thereunto belonging, shall be deemed to be transferred to and vested in the resulting bank without any deed or other transfer, and the resulting bank, without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, registrar or transfer agent of stocks and bonds, guardian, assignee, receiver, and in every other fiduciary capacity, in the same manner and to the same extent as was held and enjoyed by the merging banks, insured savings association, or the converting bank or insured savings association.** Any reference to a merging or converting bank or a merging or converting insured savings association in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of the writing." (Emphasis added.)

The Illinois Banking Act clearly provides for the resulting bank that arises out of a merger or conversion, as those terms are defined in that Act, to step into both the benefits and the liabilities of the prior banks.

In regards to advanced trade-in credits, 86 Ill. Adm. Code 130.445(d) states that such credits are not transferable. When banks are merged or converted, as a matter of law, the new bank takes over the prior bank's liabilities and benefits as if it were the prior bank. A transfer in the manner meant by the regulation does not occur in these instances. Therefore, pursuant to the Illinois Banking Act, a resulting bank can use the advanced trade-in credits of the prior bank as a matter of law. No additional steps or transfers are needed.

When using an advanced trade-in credit of a prior bank, the resulting bank should include information on Form ST-556 when the advanced trade-in credit is taken. This information should indicate the name of the prior corporation in whose name the advanced trade-in credit was originally issued, the name of the new or surviving corporation that is taking the advanced trade-in credit, and a

statement that the change in ownership of the advanced trade-in credit was due to a merger or consolidation pursuant to the Illinois Banking Act.

Further, entities that are required to be registered with Illinois that are involved with mergers, consolidations or conversions should complete a new Form NUC-1 to register with the Department or to update their current registration information.

Please note that the transfer of the advanced trade-in credit discussed above only occurs when a merger or conversion as described in the Illinois Banking Act takes place. The advance trade-in credits can not be transferred if any other type of reorganization or sale of assets occurs.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.